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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/498,369	02/04/2000	Victor H. Shear	07451.0010-01000	8725	
22852	7590 09/23/2005		EXAMINER		
FINNEGAN	N, HENDERSON, FAR.	DIXON, THOMAS A			
LLP 901 NEW YO	ORK AVENUE, NW	ART UNIT	PAPER NUMBER		
	ON, DC 20001-4413	3639			

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner			Applicat	tion No.	Applicant(s)	Applicant(s)			
Thomas A, Dixon  3639  Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MALING DATE OF THIS COMMUNICATION.  Believe to the marry to a mile but under the protection and Post and the state size (3) MONTH is more than given to a mile but under the protection and the state of the state size (3) MONTH'S from the major date of this communication.  If NO prind for reply is adenticed above, the near-mained date of the state size (3) MONTH'S from the major date of this communication.  If NO prind for reply is adenticed above, the near-mained date of this communication.  If NO prind for reply is adenticed above, the near-mained date of this communication.  If NO prind for reply is adenticed above, the near-mained date of this communication.  If NO prind for reply is adenticed by the official than their mornish after the mailing date of this communication.  If NO prind for reply is adenticed by the state into an intermediation and the state of the communication.  Any reduce any search part term adjustment. See 37 CFR 1.704(b).  Status  1) □ Responsive to communication(s) filled on	Office Action Summary			369	SHEAR ET AL.				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of term rany be availated under the provisions of 37 GR 1.136(a), in no event, however, may rary be them will seed the provision of 37 GR 1.136(a). In one event, however, may rary be them will seed the provision of				er	Art Unit				
A SHORTEND STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - after SIX (9) MONTHS from the trailing date of this communication If No period from the part of the communication is 11-100 period from the part of the communication Failure is X (9) MONTHS from the action of the communication Failure to trail by the period from the part of the communication is 11-100 period from the part of the communication Failure to trail by the period from the part of the from the failure period vall again and vall expense XI, MONTHS from the railing date of this communication, even if timely face, may reduce they communication Failure to trail by the period from the part of the from the failure of this communication, even if timely face, may reduce they communication Failure to the plant term adjustment. See 37 CFR 1.704(9).  Status  1) Responsive to communication(s) filed on a construction of the part of the from the failure of the communication, even if timely face, may reduce they cannot be presented and part of the failure of the scenario of the communication Application is application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  - Application of the above claim(s) is/are allowed (Claim(s) 15:1-195 (s/are rejected (Claim(s) 15:1			Thomas	A. Dixon	3639				
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Electrosides of the many be waited used the provision of 3° CPR 1.13(b), in no event, however, may a reply be timely filed after 5X (5) MONTHS from the mailing date of this communication.  Fallish to reply when the set or cannot provide the provision of the communication of th			ation appears on tl	ne cover sheet with	the correspondence a	ddress			
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2a) ☐ This action is FINAL. 2b) ☑ This action is non-final.  3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ☑ Claim(s) 151-195 is/are pending in the application. 4a) Of the above claim(s)	Status								
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U.S. Patent and Trademark Office PTOL-326 (Rev. 7-05) Application/Control Number: 09/498,369

Art Unit: 3639

#### **DETAILED ACTION**

### Response to Amendment

- 1. The RCE of 7/27/05 and arguments have been considered, the previous rejections are withdrawn.
- 2. The IDS of 7/27 have been considered.

## **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 151 and 191 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,112,181. Although the conflicting claims are not identical, they are not patentably distinct from each other.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Dixon Primary Examiner Art Unit 3639

September 05